LOUIS EDWARD VAN BUERLE & ANOR A

v.

TANG HAK JU & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA B
ABDUL MALIK ISHAK JCA
AZAHAR MOHAMED JCA
ANANTHAM KASINATHER JCA
[CIVIL APPEALS NO: P-02-(IM)(NCVC)-2983-12-2011
& P-02-(IM)(NCVC)-2984-12-2011] C
20 JUNE 2012

CIVIL PROCEDURE: *Judgments and orders - Setting aside - Application to nullify judgment - Whether judgment a nullity - Whether court acted in excess of jurisdiction - Whether there was evidence of deliberate fraud upon court - Whether there was reasonable cause of action - Rules of the High Court 1980, O. 18 r. 19* D

The first respondent applied for alienation of Lots 954 and 955 ('PT91') for quarry purposes, claiming that based on a search result, the original alienation in favour of Hock Teik Huay Kuan and Hock Teik Cheng Sin Temple ('the associations') had been revoked. His application was allowed. After paying all the required payments including premium and quit rents, the land was alienated to the first respondent by way of a 15 year state lease. Subsequently, the alienation of Lot PT91 in favour of the first respondent was challenged by the associations. The State Government eventually cancelled the first respondent's title to Lot PT91 which caused the first respondent to sue the Pengarah Tanah dan Galian Pulau Pinang and two others ('the defendants') in the Penang High Court Originating Summons No. 24-151-2005 ('OS'). The OS was heard and determined on its merits and the Judicial Commissioner ('JC') ruled that it was not open to the defendants to cancel an otherwise valid alienation of Lot PT91 to the first respondent ('the JC's judgment'). His Lordship held that the first respondent be compensated upon the cancellation of Lot PT91 and ordered for damages to be assessed. The JC's judgment was the subject matter of appeal to the Court of Appeal, which was dismissed due to wilful non-compliance with the Rules of the Court of Appeal 1994. Following the dismissal of the appeal, damages were assessed at RM29,000,000. The damages assessed in favour of the first respondent were the subject matter of

E F G H I

A another appeal to the Court of Appeal, which was allowed and the quantum of damages reduced to RM587,055. The appellant filed the writ of summons forming the subject matter of this appeal to set aside the JC's judgment. According to the appellant, the judgment of the Court of Appeal only served to reduce the
B quantum of damages whereas what the appellants were seeking to achieve in this writ action was to nullify the whole of the JC's judgment. The writ filed in this action promptly formed the subject matter of an application under O. 18 r. 19 of the Rules of the High Court 1980 by the first respondent to strike out the same.
C The appellants resisted this application, contending that the JC's judgment was a nullity on these grounds, *ie*, (i) the JC's judgment was null and void since the court in excess of its jurisdiction had proceeded to grant damages; (ii) the respondent had fraudulently withheld information and misled the defendants into believing he
D had no knowledge that Lot PT91 had been alienated to the associations, thus the first respondent had perpetrated a fraud on the court and a court of coordinate jurisdiction was entitled to impeach the JC's judgment.

E **Held (dismissing the appeals)**
Per Anantham Kasinather JCA delivering the judgment of the court:

(1) The Court of Appeal had already redressed the alleged error
F in the JC's judgment by reducing the award to one of 'adequate compensation'. Admittedly, this was not the same as the JC's judgment being set aside for excess of jurisdiction. However, since this did not take place in the appeal from the JC's judgment, it was entirely the appellants' fault as the
G appeal had been struck out due to the defendants' failure to comply with the Rules of the Court of Appeal. (para 12)

(2) One High Court can impeach the judgment of another High Court for fraud, only if there is evidence of a deliberate fraud upon the court and not fraud on the defendants in the other
H action (*Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd*; refd). What was evident from the appellant's pleaded case was that there was no allegation of any deliberate fraud upon the court by the first respondent. What was alleged by the appellants against the first respondent was that he obtained the JC's
I judgment by falsely inducing the defendants to alienate PT91. (para 13)

(3) Since the appellants' pleaded case did not fall within the ambit of the very limited ground upon which one High Court can impeach the judgment of another High Court for fraud, this appeal should be dismissed. Apart from this defect in the appellants' statement of claim, this court was satisfied that the defendants in the OS were not in any way misled by the first respondent. (para 14)

(4) The defect in the appellants' pleaded case meant that the appellant's statement of claim did not disclose a reasonable cause of action and was consequently and properly struck out by the trial judge. The appellants appealed against the decision of the trial judge refusing the appellants' application to amend its statement of claim to reflect the representative status of the appellants. In light of the decision to strike out the claim, this appeal was now academic. (paras 16 & 17)

Bahasa Malaysia *Translation Of Headnotes*

Responden pertama telah memohon untuk pemberimilikan Lot 954 dan Lot 955 ('PT91') untuk tujuan kuari, dengan menyatakan bahawa berdasarkan hasil carian, pemberimilikan asal yang berpihak kepada Kuil Hock Teik Huay Kuan dan Hock Teik Cheng Sin ('persatuan-persatuan') telah dibatalkan. Permohonannya telah dibenarkan. Selepas membuat bayaran yang diperlukan termasuk premium dan cukai tanah, tanah tersebut telah diberi milik kepada responden pertama melalui sewa kerajaan bagi tempoh 15 tahun. Kemudiannya, pemberimilikan Lot PT91 yang memihak kepada responden pertama telah dicabar oleh persatuan-persatuan. Kerajaan Negeri akhirnya membatalkan hak milik responden pertama kepada Lot PT91 yang menyebabkan responden pertama menyaman Pengarah Tanah dan Galian Pulau Pinang dan dua lagi pihak ('defendan-defendan') di dalam Mahkamah Tinggi Pulau Pinang Saman Pemula No. 24-151-2005 ('SP'). SP telah didengar dan diputuskan atas merit dan Pesuruhjaya Kehakiman ('PK') memutuskan bahawa ia tidak terbuka kepada defendan-defendan untuk membatalkan pemberimilikan yang sah Lot PT91 kepada responden pertama ('penghakiman PK'). Beliau telah membuat keputusan bahawa responden pertama harus diberi ganti rugi apabila Lot PT91 dibatalkan dan memerintahkan supaya ganti rugi ditaksirkan. Penghakiman PK adalah hal perkara rayuan kepada Mahkamah Rayuan, yang telah ditolak kerana ketidakpatuhan Kaedah-Kaedah Mahkamah Rayuan 1994. Berikutan penolakan

rayuan itu, ganti rugi telah ditaksirkan sebanyak RM29,000,000. Ganti rugi yang telah ditaksirkan memihak kepada responden pertama adalah hal perkara dalam satu rayuan lain, yang telah dibenarkan dan kuantum ganti rugi dikurangkan kepada RM587,055. Perayu memfailkan writ saman yang membentuk hal perkara rayuan ini untuk mengenepikan penghakiman PK. Menurut perayu, penghakiman Mahkamah Rayuan hanya mengurangkan kuantum ganti rugi sedangkan apa yang perayu-perayu telah memohon di dalam tindakan writ ini adalah untuk membatalkan keseluruhan penghakiman. Writ yang difailkan di dalam tindakan ini seterusnya membentuk hal perkara permohonan di bawah A. 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 oleh responden pertama untuk membatalkan yang sama. Perayu-perayu menentang permohonan ini, dengan hujahan bahawa penghakiman PK harus dibatalkan atas alasan-alasan ini, iaitu, (i) penghakiman PK adalah tak sah dan terbatal kerana mahkamah telah melebihi bidangkuasanya dengan memberikan ganti rugi; (ii) responden telah secara fraud menyimpan maklumat dan mengelirukan defendan-defendan untuk mempercayai beliau tidak mempunyai pengetahuan bahawa Lot PT91 telah diberimilik kepada persatuan-persatuan, oleh itu responden pertama telah melakukan penipuan ke atas mahkamah dan mahkamah yang mempunyai bidang kuasa setara berhak mencabar penghakiman PK.

Diputuskan (menolak rayuan-rayuan)

Oleh Anantham Kasinather HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah Rayuan telah menangani kesalahan yang didakwa di dalam penghakiman PK dengan mengurangkan award kepada 'pampasan yang mencukupi.' Diakui, ini tidak sama dengan pengenepian penghakiman PK kerana telah melebihi bidangkuasanya. Walau bagaimanapun, oleh sebab pengenepian itu tidak berlaku di dalam rayuan dari penghakiman PK, ianya adalah kesalahan perayu-perayu sepenuhnya kerana rayuan telah dibatalkan atas kegagalan defendan-defendan mematuhi Kaedah-Kaedah Mahkamah Rayuan.

(2) Satu Mahkamah Tinggi boleh mencabar penghakiman satu Mahkamah Tinggi yang lain untuk fraud, hanya apabila terdapat keterangan penipuan yang disengajakan ke atas mahkamah dan bukan fraud ke atas defendan-defendan di dalam tindakan yang lain (*Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd;* dirujuk). Apa yang terbukti adalah kes perayu-perayu yang diplidkan di sini tidak mengandungi dakwaan fraud yang disengajakan ke atas mahkamah oleh responden pertama. Apa yang didakwa oleh perayu-perayu terhadap responden pertama adalah bahawa beliau telah memperolehi penghakiman PK secara palsu yang mendorong defendan-defendan memberimilik PT91.

(3) Oleh kerana kes perayu-perayu yang diplidkan tidak termasuk dalam rangkuman alasan-alasan terhad di mana satu Mahkamah Tinggi boleh mencabar penghakiman Mahkamah Tinggi satu lagi untuk fraud, rayuan ini harus ditolak. Selain daripada kecacatan yang terdapat di dalam penyata tuntutan perayu-perayu, mahkamah ini berpuas hati bahawa defendan-defendan di dalam SP tidak dalam apa jua cara dikelirukan oleh responden pertama.

(4) Kecacatan di dalam kes yang diplidkan perayu-perayu bermaksud penyata tuntutan perayu tidak mendedahkan sebarang kausa munasabah dan telah dibatalkan dengan betul oleh hakim bicara. Perayu-perayu merayu terhadap keputusan hakim bicara menolak permohonan perayu-perayu untuk meminda penyata tuntutannya untuk mencerminkan kedudukan perwakilan perayu-perayu. Berdasarkan keputusan untuk membatalkan tuntutan tersebut, rayuan ini telah menjadi akademik.

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd [2001] 2 CLJ 321 CA ***(refd)***

Hock Hua Bank Bhd v. Sahari Murid [1980] 1 LNS 92 FC ***(refd)***

Seng Huat Hang Sdn Bhd & Ors v. Chee Seng & Co Sdn Bhd [1987] 1 MLJ 413 ***(foll)***

SP Chengalvaraya v. Jagannath AIR 1994 SC 853 ***(refd)***

Legislation referred to:
Federal Constitution, art. 13(2)
National Land Code, ss. 16, 380
Rules of the High Court 1980, O. 18 r. 19

For the appellant - Thayalan (EK Ong with him); M/s CS Ong & Co
For the respondent - YC Wong; M/s YC Wong

[Appeal from High Court, Pulau Pinang; Civil Suit No: 22NCVC-276-2011]

Reported by Suhainah Wahiduddin

JUDGMENT

Anantham Kasinather JCA:

Background Facts

[1] Lots 954 and 955 were originally alienated to Hock Teik Huay Kuan and Hock Teik Cheng Sin Temple (the said associations) by way of a 99 year state lease registered in 1969. The 1st respondent owned the adjoining quarry land, Lots 375 and 376.

[2] Sometime in the year 2002, the 1st respondent applied for alienation of Lots 954 and 955 for quarry purposes. The 1st respondent claimed that based on a search result, he had reason to believe that the alienation in favour of the associations had been revoked. Hence, his application. His application was allowed in July 2003. After paying all the required payments including premium and quit rents, the land was alienated to the 1st respondent by way of a 15-year state lease for quarry purposes. The same land title was now described as Lot PT 91 in lieu of Lots 954 and 955.

[3] Sometime in the year 2004, the alienation of Lot PT 91 in favour of the 1st respondent was challenged by the associations. The State Government in acknowledgment of the continued alienation of Lots 954 and 955 to the associations eventually cancelled the 1st respondent's title to Lot PT 91. This cancellation caused the 1st respondent to sue the Pengarah Tanah Dan Galian Pulau Pinang and two others ('the defendants') in Penang High Court Originating Summons No: 24-151-2005 ('OS').

[4] The OS was heard and determined on its merits by the Penang High Court. Judicial Commissioner John Louis O'Hara (as His Lordship then was) in a decision delivered on 23 December 2005 ruled that it was not open to the defendants to cancel an otherwise valid alienation of Lot PT 91 to the 1st respondent ('the O'Hara judgment'). His Lordship reasoned that the cancellation permitted by s. 380 of the National Land Code was limited to:

> non-substantive mistakes and it clearly does not confer on the registrar the power to cancel a title issued in accordance with the National Land Code or to revoke a perfected alienation which had conferred an indefeasible title on the plaintiff.
>
> (see p. 473)

His Lordship then ruled that since the alienation of Lot PT 91 to the 1st respondent had created a legitimate expectation of peaceful enjoyment and deprived the 1st respondent from proceeding to exploit Lot PT 91 for profit, it was only fair that the 1st respondent be compensated upon the cancellation of Lot PT 91. His Lordship then ordered for damages to be assessed.

[5] The O'Hara judgment was the subject matter of appeal to the Court of Appeal. The appeal was dismissed due to wilful non-compliance with the Rules of the Court of Appeal 1994. Following the dismissal of the appeal, damages were assessed at RM29,000 inclusive of interest. The damages assessed in favour of the 1st respondent were the subject matter of another appeal to the Court of Appeal. This time the appeal was allowed on 11 January 2012 and quantum of damages reduced to RM587,055. The 1st respondent's application for leave to appeal to the Federal Court is now pending.

Appellant's Claim

[6] At the time the 1st respondent applied for the alienation of Lots 954 and 955 to himself, the 1st respondent was fully aware that these two pieces of land had already been alienated to the associations. According to counsel for the appellant, the respondent's knowledge of the status of these two lots is evident from the offer to purchase these two lots by one Tan Poh Hong Hardware and Construction Sdn Bhd from the associations and the associations' solicitors' reply dated 20 January 1994 and

2 March 1994 respectively (see para. 10 of the statement of claim). The nexus between Tan Poh Hong and the 1st respondent being that the 1st respondent is a shareholder and Director of the said Tan Poh Hong Hardware and Construction Sdn Bhd. (see para. 12 of the statement of claim). It is the appellant's case that the 1st respondent fraudulently withheld this information from the defendants and misled the defendants into believing that he had no knowledge that Lots 954 and 955 had been alienated as early as 1969 to the associations (see paras. 13 to 15 of the statement of claim). Counsel for the appellant contended before us that if these two letters had been produced to the defendants, then, the defendants would not have been misled into issuing the fresh title described as Lot PT 91 in favour of the 1st respondent. In paras. 15 and 16 of the statement of claim, the claimants pleaded their case against the 1st respondent and the defendants in this manner:

> 15. The State Authority, without realizing that the said land is not a State Land, by genuine/honest mistake, approved the alienation of the said land to the 1st defendant subject to payment of premium of RM354,473.
>
> 16. Accordingly, on/or about 14-10-2003, the Registrar of Titles, Penang issued a separate title for the said land in favour of the 1st defendant Under H.S. (D) No: 49060, P.T. 91 Mukim 20, Province Wellesley Central (the new title).

[7] Notwithstanding the success enjoyed by the defendants in having the damages awarded in the O'Hara judgment reduced from RM28,000 to RM587,000, the appellant filed the writ of summons forming the subject matter of this appeal to set aside the O'Hara judgment based on the facts set out in para. 6 above. According to counsel for the appellant, the judgment of the Court of Appeal only served to reduce the quantum of damages whereas what the appellants were seeking to achieve in this writ action was to nullify the whole of the O'Hara judgment (see para. 17 of the statement of claim).

[8] The writ filed in this action promptly formed the subject matter of an application under O. 18 r. 19 by the 1st respondent to strike out the same. The appellants resisted this application contending that the O'Hara judgment was a nullity on two grounds. The first was that a Court of Law can only grant

'adequate compensation' and not damages for a contravention of art. 13 of the Federal Constitution. According to counsel for the appellant, the intitulement to the OS made specific reference to art. 13 and s. 16 of the National Land Code and consequently effectively limited the claim of the 1st respondent to the recovery of 'adequate compensation' pursuant to art. 13(2) of the Federal Constitution. It was the submission of counsel for the appellant that the O'Hara judgment is null and void since the court in excess of its jurisdiction had proceeded to grant damages. Counsel fortified his submission with reference to the following passage:

> It is of course settled laws as laid down by the Federal Court in *Hock Hua Bank*'s case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be *null* and *void* on the ground of illegality or lack of jurisdiction so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v. Robertson* [1985] AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the Court … which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make.

in the judgment of Mohamad Azmi FCA in *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 at pp. 92-93.

[9] The second ground was that by not disclosing the existence and contents of the two letters dated 20 January 1994 and 2 March 1994, the 1st respondent had perpetrated a fraud on the court and a court of coordinate jurisdiction was entitled on the basis of the line of authorities including *Hock Hua Bank v. Sahari Murid* [1980] 1 LNS 92 and *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* to impeach the O'Hara judgment (see para. 29(1) of the statement of claim).

[10] Before we proceed to consider the merits of the grounds raised by counsel for the appellant, we propose to set out the law governing the circumstances under which a Court of Law can impeach an earlier judgment of a court of coordinate jurisdiction. In our judgment, the law applicable is best set out in the judgments of the court in the two cases of *Seng Huat Hang Sdn Bhd & Ors v. Chee Seng & Co Sdn Bhd* [1987] 1 MLJ 413 and *SP Chengalvaraya v. Jagannath AIR* 1994 SC 853. In *Seng Huat Hang Sdn Bhd & Ors v. Chee Seng & Co Sdn Bhd*, Edgar Joseph Jr J (as he then was) said:

> *Now 'acts of the highest judicial authority, though 'not to be impeached from within,' yet 'are impeachable from without,' for 'although it is not permitted to show that the court was mistaken, it may be shown that they were misled.* Fraud is an extrinsic collateral act; which vitiates the most solemn proceedings of courts of justice'. Per De Gray, CJ in *Duches of Kingston*'s case two Smith LC (13th Edn) 644 at p. 651. 'Fraud' said Lord Buckmaster 'is an insidious disease, and if clearly proved to have been used so that it might deceive the court, spreads to infect the whole body of the judgment'. In *Jone Co v. Beard* [1930] AC 298 (HL) at p. 301.
>
> *On the other hand, in the Australian Case of Price v. Stone [1964] VR 106. Gillard, J pointed out the necessity of proving a deliberate fraud upon the court as a foundation of this relief, and contrasted this with misleading or erroneous evidence falling short of this requirement.*
>
> This last point comes in for emphasis in *Patch v. Ward* [1867] 3 Ch App 203 and in the New Zealand case of *Giffen v. Leggatt* [1902] 2 NZLR 427.
>
> (emphasis added)

In the Indian case of *SP Chengalvaraya v. Jagannath*, Kuldip Singh J said as follows:

> A party litigant cannot be indifferent and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified

registration copy of exh. B-15 and non-suited the plaintiff; and it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence.

[11] This court adopted the pronouncements of Edgar Joseph Jr J and Kuldip Singh J in *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* [2001] 2 CLJ 321. Gopal Sri Ram JCA (as His Lordship then was) after acknowledging the correctness of the principle of law enunciated by Edgar Joseph Jr J and Kuldip Singh J pronounced the entitlement of a litigant to impeach a judgment to arise in the following circumstances (see p. 336):

The principle then to be culled from the authorities is that a judgment may be impeached for deliberate fraud practised upon the court, and it is insufficient to show that a litigant merely convinced the court through misleading or erroneous evidence.

Decision Of The Court

[12] With respect, in our judgment, the first ground of complaint of the appellants has already been addressed by the Court of Appeal. We opine to this effect because the Court of Appeal in the appeal against the assessment of damages reduced the damages granted to the 1st respondent to RM587,000. This sum effectively representing a refund of the premium of RM354,473 paid by the 1st respondent upon the alienation of Lot PT 91 to him and the reimbursement of other expenses incurred by the 1st respondent. In other words, the Court of Appeal has already redressed the alleged error in the O'Hara judgment by reducing the award to one of 'adequate compensation'. Admittedly, this is not the same as the O'Hara judgment being set aside for excess of jurisdiction. However, that this did not take place in the appeal from the O'Hara judgment is entirely the fault of the appellants. The appeal having been struck out due to the failure of the defendants to comply with the Rules of the Court of Appeal.

[13] As regards the second issue, it is evident from the pronouncements of Edgar Joseph Jr J and Kuldip Singh J, and this Court in *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* that one High Court can impeach the judgment of another High Court for fraud, only if there is evidence of a deliberate fraud upon the court and not fraud on the defendants in the other action. In our judgment, what is evident from the appellant's pleaded case is that

there is no allegation of any deliberate fraud upon the court by the 1st respondent. What is alleged by the appellants against the 1st respondent is that he obtained the O'Hara judgment by inducing the defendants to alienate Lot PT 91 by:

> falsely stating that the said land is a state land when he knew fully well that the state land is a alienated land
>
> (see para. 29(1) of the statement of claim).

[14] In our judgment, since the appellants' pleaded case does not fall within the ambit of the very limited ground upon which one High Court can impeach the judgment of another High Court for fraud, we are constrained to dismiss this appeal. Apart from this defect in the appellants' statement of claim, we are satisfied that the defendants in the OS were not in any way misled by the 1st respondent into believing that Lots 954 and 955 had not earlier been alienated to the associations. We opine to this effect because the evidence before Justice O'Hara was that the defendants had by mistake cancelled Lots 954 and 955 in the record maintained by them. This is evident from the following finding of fact:

> Faced with the claims raised by the previous owners, the State Government initially did not question the validity of the alienation to the plaintiff, but proceeded to negotiate with the previous owners for settlement. The State Government explained that there were irregularities in the titles to Lots 954 and 955, and that the word 'Dibatalkan' was stamped in the register of the State Land Office.
>
> (pp. 464 and 465 of Jilid 3)

in the O'Hara judgment. Applying the principles of law enunciated by Edgar Joseph Jr J in *Seng Huat Hang Sdn Bhd & Ors v. Chee Seng & Co Sdn Bhd*, this is not a case where the court was misled.

[15] Much effort was expended by both counsel on the question of the locus of the appellant to commence and pursue this claim against the 1st respondent and the defendants. Counsel for the respondents contended that the appellants were nothing more than 'busy bodies' since they were neither directly or indirectly involved in the subject matter of the OS. Counsel for the appellants, on the other hand, contended that the appellants as

rate payers had sufficient interest in the subject matter to pursue this matter. The alleged interest taking the form of a possible rate hike if the defendants were required to pay the substantial damages originally ordered to be paid by High Court before the same was reduced by the Court of Appeal.

[16] With respect, we are not disposed to express an opinion one way or another on the subject of the appellants' locus since the defect in the appellants' pleaded case means that the appellants' statement of claim did not disclose a reasonable cause of action and was consequently, in our judgment, properly struck out by the learned judge under O. 18 r. 19 of the RHC.

[17] Civil Appeal No: P-02-(IM)(NCVC)2984-12-2011 is an appeal against the decision of the learned trial judge refusing the appellants' application to amend its statement of claim to reflect the representative status of the appellants. In the light of our decision to strike out the plaintiff's claim, naturally this appeal is now academic. In the circumstances, we dismiss both appeals with costs. In respect of Civil Appeal No: P-02-(IM)(NCVC)-2983-12-2011 we order the appellants to pay costs of RM15,000 to the respondent. In respect of Civil Appeal No: P-02-(IM)(NCVC)-2984-12-2011 we order the appellants to pay costs of RM5,000 to the respondent. Finally, we order that the deposit in both appeals be paid to the respondents towards account of the costs payable by the appellants to the respondent in the two appeals.